

# Exhibit 335

*United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.  
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS*

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support  
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

1 NO. GV002327

2

3 THE STATE OF TEXAS ) IN THE DISTRICT COURT

4 ex rel. )

5 VEN-A-CARE OF THE )

6 FLORIDA KEYS, INC., )

7 Plaintiff(s), )

8 )

9 VS. ) TRAVIS COUNTY, TEXAS

10 )

11 DEY, INC.; ROXANE )

12 LABORATORIES, INC., WARRICK )

13 PHARMACEUTICALS CORPORATION, )

14 SCHERING CORPORATION, )

15 SCHERING-PLough CORPORATION, )

16 LIPHA, S.A., MERCK-LIPHA, )

17 S.A., MERCK, KGAA, and EMD )

18 PHARMACEUTICALS, INC., )

19 Defendant(s). ) 53RD JUDICIAL DISTRICT

20

21 \*\*\*\*\*

22 ORAL AND VIDEOTAPED DEPOSITION OF

23 DEBRA BRONSTEIN

24 March 11th, 2003

25 \*\*\*\*\*

26 ORAL AND VIDEOTAPED DEPOSITION OF DEBRA BRONSTEIN,  
27 produced as a witness at the instance of the  
28 Plaintiff(s), and duly sworn, was taken in the  
29 above-styled and numbered cause on March 11th, 2003,  
30 from 9:57 a.m. to 8:12 p.m., before Cynthia Vohlken,  
31 CSR in and for the State of Texas, reported by machine  
32 shorthand, at the Amerisuites-Old Town, 7300 East 3rd  
33 Street, Scottsdale, Arizona pursuant to the Texas  
34 Rules of Civil Procedure.

1 A. L.D. Caulk Company, which is part of L.D.  
2 which is part of Dentsply.

3 Q. How do you spell that?

4 A. D-e-n-t-s-p-l-y, Dentsply.

5 Q. And the L.D. company?

6 A. C-a-u-l-k.

7 Q. C-a-u-l-k.

8 A. In Milford, Delaware.

9 Q. Is that where you worked out of, out of  
10 Delaware?

11 A. Yes, that's correct. And then after that --  
12 I mean, do you want my employment history?

13 Q. No, not really. I don't think I need to go  
14 into that right now. So let me -- let me just recap  
15 what -- what you have told us. In 1989 you worked for  
16 a pharmaceutical company, GynoPharma, which  
17 manufactured products for -- gynecological products?

18 A. That's correct.

19 Q. And mostly branded products, but including  
20 one generic which is an oral contraceptive?

21 A. That's right.

22 Q. Okay. And when did you come to Dey Labs?

23 A. January of 1996.

24 Q. January '96. Okay. And how did you -- how  
25 did you come to that position at Dey?

1 you interviewed with?

2 A. Yes. I apologize for the lapse of memory,  
3 but it was -- the head of personnel. She still is the  
4 head of personnel to the best of my knowledge.

5 Q. Ms. Villegas?

6 A. Yes. Amelia Villegas.

7 Q. And did you ever interview with Mr. Rice?

8 A. I believe I did, yes.

9 Q. Do you know who made the ultimate decision  
10 whether or not to hire you?

11 A. That would be an assumption on my part.

12 Q. Okay. What position were you hired into at  
13 Dey Labs?

14 A. Director of marketing.

15 Q. Now, did you fill the position that had been  
16 vacated by Ms. Burnham?

17 A. That's correct. Actually, I don't know if  
18 she had the title of director of marketing. She may  
19 not have. She may have been marketing manager.

20 Q. Did she perform essentially the same function  
21 that you performed when --

22 A. To the best of my knowledge.

23 Q. Okay. Who did you report to?

24 A. Bob Mozak.

25 Q. Did you ever have occasion to report directly

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1 Q. And do you know whether it was a federal  
2 governmental agency or a state governmental agency?

3 A. I don't recall.

4 Q. Okay. Fair enough. Do you believe that this  
5 document search that you conducted was in response to  
6 the request, the subpoena, from the governmental  
7 agency asking for documents?

8 A. I'm sorry, could you repeat that question?

9 Q. Sure. Do you believe that the document  
10 search that you undertook when Mr. Galles' found  
11 Exhibit 72 was conduct in response to this subpoena or  
12 document request by a governmental agency?

13 A. Yes.

14 Q. And you believe that had to do -- something  
15 to do with an investigation into pricing?

16 A. That's right.

17 MR. WINTER: Okay. We are going to  
18 change the tape, so why don't we be efficient with our  
19 time here and take a real quick break if anybody needs  
20 to.

21 THE VIDEOGRAPHER: We're off the record  
22 at 11:09 a.m. This conclude Tape Number 1.

23 (Recess from 11:09 to 11:19)

24 THE VIDEOGRAPHER: Everyone ready?

25 MR. WINTER: Yes.

1 Q. Okay. The -- is this something that you  
2 would understand and know in the course of performing  
3 your duties while at Dey?

4 A. Yes.

5 Q. Is it something that you would expect that  
6 your predecessor, Helen Burnham, would understand and  
7 know in performing her duties in her capacity as your  
8 predecessor at Dey?

9 A. Absolutely.

10 Q. Would you take a look with me at Exhibit 72.  
11 You were shown this by the State as a document that  
12 Ms. Burnham authored. Take a look, if you would, at  
13 the first phrase of the paragraph I'm pointing to and  
14 I'm going to read it into the record. "WAC is not  
15 representative of our published wholesale list  
16 prices." Do you agree that that's an accurate  
17 statement or would you say based upon your experience  
18 at Dey that that's an inaccurate statement?

19 A. I would say that's an inaccurate statement.

20 Q. You don't agree with that statement?

21 A. I don't agree with that statement.

22 Q. Now, can you -- can you confirm that you had  
23 absolutely nothing to do with the preparation of that  
24 memo?

25 A. I can -- yes.

1 Q. Okay. So if a pharmacy is looking to  
2 reimbursements from let's say a third-party payer or  
3 from the Medicaid system or the Medicare system, where  
4 is the pharmacy going to look to get its profits?

5 A. Dispensing fees and other differences in  
6 prices.

7 Q. From the reimbursement?

8 A. Uh-huh.

9 Q. I'm sorry?

10 A. Reimbursement, yes. I'm sorry.

11 Q. Occasionally I just have to -- we have to  
12 keep it audible. So based on your experience at Dey  
13 you've indicated in your testimony that the importance  
14 of particular factors to a customer in terms of what  
15 that customer focused on in making its purchase of a  
16 Dey product would be an individualized -- would be  
17 fairly individual to the customer.

18 A. That's correct.

19 Q. The -- did you find that some of the  
20 customers were more concerned about the profit they  
21 were going to get from the third-party payers and  
22 Medicaid reimbursers?

23 A. Yes, absolutely.

24 Q. Did you feel that -- that Dey educated these  
25 customers in the importance of reimbursements --

1 reimbursement as a source of profit to them or did you  
2 feel that they understood this?

3 A. They educated Dey, not the other way around.  
4 They educated us, the management, they educated the  
5 reps, they educated us about reimbursement.

6 Q. The -- would you say that the --

7 A. And their -- their role in it and what comes  
8 to them we had no idea.

9 Q. The --

10 A. I had no idea.

11 Q. How about -- just take a second here. You  
12 refer to the term AWP as a sort of reference price or  
13 list price earlier in your testimony. The -- have you  
14 ever been under the impression that AWP represented a  
15 price that's actually paid by somebody for a generic  
16 drug in the marketplace?

17 A. I don't know. We simply suggest it and then  
18 walk away from it, so I honestly don't know if anybody  
19 does or doesn't. It's possible there's some dummy out  
20 there paying it.

21 Q. The -- and -- but did Dey typically sell  
22 its -- sell its products at AWP as far as you know?

23 A. No.

24 Q. Okay. The -- and you knew that the entire  
25 time you were at Dey.

1       prices to without going back to the pricing committee  
2       for approval.

3       A.     That's right.

4       Q.     Okay. And then there was a second tier where  
5       they could --

6       A.     Go to their --

7       Q.     -- negotiate a price down to even below that  
8       as long as they had a supervisor's permission.

9       A.     That's right.

10      Q.     Okay. And then the third tier was that they  
11       would then have to go to the pricing committee for  
12       approval and that's where Bob Mozak would have a role.

13      A.     Right. And we also, which had been done  
14       before, but we also requested that they provide the  
15       amount of information that would be required to  
16       evaluate and place these customers against the grid,  
17       the volume. Volume all these people do with, you  
18       know, programs, exactly, so they had to put certain  
19       information into the pricing committee for us to use  
20       the grid.

21      Q.     Okay. The -- do you consider WAC to be a  
22       fictitious price or do you consider WAC to be a  
23       meaningful price from the standpoint of a  
24       manufacturer?

25      A.     It's a jumping off point. It's a meaningful

1 price. It has -- you know, it -- it gives a -- an  
2 anchor is probably what I would call it.

3 Q. The -- if you didn't have some kind of list  
4 price would it make it more difficult to have a  
5 structure with which to negotiate prices?

6 A. Yes, of course.

7 Q. Explain, if you would, what are samples  
8 provided to the home care pharmacies?

9 A. Okay. It's unusual for generic companies to  
10 have samples because the price is so low they can't  
11 afford to sample, plus what's the purpose of the  
12 sample. I mean, it's -- it's to try something and if  
13 it's generic it's exactly like something else. So  
14 having samples was very unusual. But for a home  
15 healthcare providing them with samples allowed them to  
16 get placement in doctors' offices so that when a  
17 patient left the office they had drug immediately to  
18 start taking until the home healthcare company started  
19 their deliveries.

20 Q. Was there a sample program that was approved  
21 by the federal government where you would label not  
22 for resale the sample?

23 A. Absolutely.

24 Q. Is that the convention or the -- or the  
25 procedure that Dey complied with?

1 drafted, is it fair to say you really do not know what  
2 Mr. Termier's position was at that particular time?

3 A. That's fair to say, yes.

4 Q. Okay. You know that at some point in time  
5 when you joined Dey he was affiliated with Lipha.

6 A. Yes.

7 Q. Okay. And you know that at the time you  
8 joined day Mr. Rice was the president or CEO of Dey.

9 A. Yes.

10 Q. But you're not certain and really don't have  
11 any idea what positions they held at that particular  
12 time.

13 A. Right.

14 Q. Okay. I want to clarify something. We've  
15 been over this so many times you would think it is  
16 already clarified. I'm sure it is, but I don't want  
17 to leave anything to chance here. When you were first  
18 shown Exhibit 72 and you were asked to comment on when  
19 you first saw it, your testimony I believe was that  
20 you believe you saw it perhaps in 1995, but you  
21 misspoke, didn't you?

22 A. Oh, yes. No, no, no, no. It was during  
23 the -- whatever. If it's a discovery process or  
24 whatever it was. It was during the first looking for  
25 the documents.

1 Q. Okay. In response --

2 A. So that would have been 1997.

3 Q. In response to the government request.

4 A. Yes.

5 Q. Okay. Did -- did Mr. Mozak ever say anything  
6 that you would interpret as discouraging you from  
7 instructing your -- the people who worked for you to  
8 find documents responsive to the government's request?

9 A. No. No, he never did.

10 Q. Did he seem to you when he asked you to  
11 cooperate in that process to be sincere and earnest in  
12 that -- in that request?

13 A. Yes, he did.

14 Q. Was there anything about the retention policy  
15 which you regarded as suspect or improper in any way?

16 A. No.

17 Q. The -- at any job you've held ever has  
18 anybody suggested to you that you should keep every  
19 single scrap of paper that inhabits your office to  
20 infinity?

21 A. No. I've worked for a company that had  
22 retention policies.

23 Q. Did Dey's retention policy that you do recall  
24 seem to you one that was reasonable in nature?

25 A. Yes. In fact, I think they kept things

1 A. Cindy's group.

2 Q. Okay. And the reason for that was what?

3 A. Just to consolidate all of the pricing kinds  
4 of things in one department and make it easier.

5 Q. Okay. Was it -- was it a step in the  
6 direction of trying to make sure that the prices were  
7 routinely consistently reported to the price reporting  
8 services so that they could be accurately published?

9 Was it consistent with that goal or -- or not  
10 necessarily?

11 A. Are you asking my opinion? I don't -- I  
12 don't -- I think it was done within my department  
13 consistently and reliably. I think it was just an  
14 attempt to restructure things that made more sense.  
15 You know, why keep that in marketing when the other  
16 work that's being done is being done under contracts.  
17 So I don't think it was a consistency.

18 Q. Okay. The --

19 A. Hope.

20 Q. From time to time did you observe that the  
21 data reporting services simply got some of the  
22 information wrong or failed to pick up a price change?

23 A. Absolutely.

24 Q. And in fact, in the case of Bluebook when you  
25 did your internal review, your historical examination,

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1 did you find that First DataBase and Bluebook had in  
2 fact failed to pick up Eve Gmeiner's correction at the  
3 end of 1995?

4 A. Yes.

5 Q. So they had carried forward the wrong figure  
6 even after that, although Ms. Gmeiner's facts showed  
7 that Dey attempted to correct the Albuterol prices.

8 A. Right.

9 Q. You said that some market share programs  
10 could affect negotiated prices. And by market share  
11 programs you're talking about programs which were  
12 designed to promote Dey's product and to achieve  
13 market share?

14 A. To increase market share --

15 Q. Okay.

16 A. -- of Dey's products versus others.

17 Q. Whether through quantity purchases or whether  
18 through co-promotional activities, what have you.

19 A. Co-op advertising, yeah, whatever.

20 Q. Okay. You refer to certain monthly reports.

21 I've seen a host of them that were authored by Todd  
22 Galles within your department. Did he sometimes  
23 author the monthly report?

24 A. No. Todd and Eve and Diane and any of the  
25 other product managers, Steven Resnik. They would